

Message Text

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INFO OCT-01 AF-10 ADP-00 IO-12 COA-02 CIAE-00 DODE-00

PM-09 H-02 INR-10 NSAE-00 NSC-10 PA-03 RSC-01 PRS-01

SS-15 USIA-12 GAC-01 OMB-01 EB-11 COME-00 INT-08 CG-00

JUSE-00 ACDA-19 AEC-11 DOTE-00 FMC-04 TRSE-00 /146 R

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AF/ E - MR. HARDY

L/ OA - MR. NORDQUIST

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R 171907 Z APR 73

FM SECSTATE WASHDC

TO AMEMBASSY DAR ES SALAAM

C O N F I D E N T I A L STATE 071496

E. O. 11652: GDS

TAGS: PBOR, ETRN, TZ, UN

SUBJECT: LOS - STRAITS

REF: DAR ES SALAAM 1054

1. REFTTEL RAISES QUESTION OF STATUS OF ZANZIBAR AND PEMBA CHANNELS AS WELL AS SCOPE OF LAW OF THE SEA TREATY UNDER NEGOTIATION. THE FOLLOWING INFORMATION IS SUPPLIED FYI. ZANZIBAR AND PEMBA CHANNELS ARE AT THEIR NARROW-EST POINTS 4.75 MILES AND 19.1 MILES WIDE RESPECTIVELY. (BECAUSE OF THE POOR QUALITY OF THE SURVEYS IN ZANZIBAR CHANNEL, THERE IS SOME UNCERTAINTY AS TO THE PRECISE WIDTH.) SINCE GOT CLAIMS A 12- MILE TERRITORIAL SEA, THESE
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CHANNELS WOULD BE OVERLAPPED BY GOT'S CLAIMED TERRITORIAL SEA.

2. THE USG BELIEVES THAT UNDER PRESENT INTERNATIONAL LAW A STATE MAY ONLY CLAIM UP TO THREE MILES FROM ITS COAST AS TERRITORIAL SEA. WATERS IN STRAITS WITHIN THREE MILES OF THE COAST ARE TERRITORIAL; HOWEVER, THE RIGHT OF INNOCENT PASSAGE THROUGH THE TERRITORIAL SEA FOR VESSELS OF ALL FLAGS MAY NOT BE SUSPENDED IN INTERNATIONAL STRAITS, THAT IS, STRAITS USED FOR INTERNATIONAL NAVIGATION BETWEEN ONE PART OF THE HIGH SEAS AND ANOTHER PART OF THE HIGH SEAS OR THE TERRITORIAL SEA OF A FOREIGN STATE. IN STRAITS MORE THAN SIX MILES WIDE, THE U. S. CONSIDERS THERE IS A CORRIDOR OF HIGH SEAS IN WHICH STATES HAVE THE RIGHT OF FREEDOM OF NAVIGATION AND OVERFLIGHT. CONSEQUENTLY, IN U. S. VIEW HIGH SEAS RIGHTS MAY BE EXERCISED IN PEMBA CHANNEL, WHILE IF SURVEYS CAN BE RELIED UPON ONLY INNOCENT PASSAGE RIGHT EXISTS IN ZANZIBAR CHANNEL.

3. THE U. S. DOES NOT RECOGNIZE UNILATERAL EXTENSIONS OF THE TERRITORIAL SEA BEYOND THREE MILES. SUCH EXTENSIONS PURPORT TO ELIMINATE FREEDOM OF NAVIGATION AND OVERFLIGHT SEAWARD OF THREE MILES AND SUBSTITUTE ONLY A RIGHT OF INNOCENT PASSAGE FOR VESSELS. IF A 12 MILE TERRITORIAL SEA LIMIT WERE ACCEPTED AT THE LOS CONFERENCE (WE BELIEVE THIS IS THE MAXIMUM LIMIT UPON WHICH BROAD INTERNATIONAL AGREEMENT CAN BE REACHED), STRAITS 24 MILES WIDE AND UNDER WOULD BECOME OVERLAPPED BY TERRITORIAL WATERS AND IF ONLY THE RIGHT OF INNOCENT PASSAGE WERE APPLIED IN THESE STRAITS FREEDOM OF OVERFLIGHT AND SUBMERGED TRANSIT WOULD BE PRECLUDED. TO PROTECT THE RIGHT OF TRANSIT THROUGH AND OVER STRAITS, THE U. S. CONCLUDED THAT WE COULD ONLY ACCEPT A 12 MILE TERRITORIAL SEA AT THE CONFERENCE IF THE RIGHT OF FREE TRANSIT, NOT MERELY INNOCENT PASSAGE, THROUGH AND OVER INTERNATIONAL STRAITS WAS GUARANTEED. THUS, UNDER THE U. S. PROPOSAL, WATERS WITHIN 12 MILES OF THE COAST IN INTERNATIONAL STRAITS WOULD BECOME TERRITORIAL, BUT BE SUBJECT TO THE LIMITED AND ESSENTIAL RIGHT OF FREE TRANSIT.

4. GOT HAS DRAWN STRAIGHT BASELINES FROM THE OUTERMOST POINTS OF THE OUTERMOST ISLANDS, WITH THE RESULT THAT
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THE GOT CONSIDERS PEMBA AND ZANZIBAR CHANNELS AS INTER-

NAL, RATHER THAN TERRITORIAL, WATERS. GOT MAPS DEPICTING STRAIGHT BASELINES WERE WITHDRAWN AFTER PUBLICATION DUE TO SUBSTANTIVE ERRORS, AND, CONSEQUENTLY, WE DO NOT KNOW THE PRECISE LOCATIONS OF THE LINES ALTHOUGH WE ARE AWARE OF THEIR INTENT. IT IS BELIEVED THAT EVEN THOUGH THESE WATERS ARE CONSIDERED INTERNAL, THE GOT PERMITS THE EQUIVALENT OF INNOCENT PASSAGE THROUGH THEM, ALTHOUGH THE PASSAGE OF WARSHIPS DOES NOT SEEM TO BE CONSIDERED INNOCENT BY THE GOT. IN INTERNAL WATERS, THERE IS NO RIGHT OF INNOCENT PASSAGE AND PASSAGE IS COMPLETELY SUBJECT TO COASTAL STATE CONSENT AND CONTROLS- THE U. S. BELEIVES THAT THE SYSTEM OF STRAIGHT BASELINES ADOPTED BY THE GOT WOULD BE CONTRARY TO INTERNATIONAL LAW AND CONSEQUENTLY DOES NOT RECOGNIZE THAT THE ZANZIBAR AND PEMBA CHANNELS ARE OR COULD BE CONSIDERED INTERNAL WATERS.

5. FROM ABOVE DISCUSSION, IT IS CLEAR THAT PEMBA AND ZANZIBAR CHANNELS WILL BE AFFECTED BY LOS NEGOTIATIONS.
U. S
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